



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,814	03/21/2001	Takashi Yugami	826.1716	1934

21171 7590 10/19/2004
STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

GART, MATTHEW S

ART UNIT PAPER NUMBER

3625

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,814

Applicant(s)

YUGAMI ET AL.

Examiner

Matthew s Gart

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3.21.2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 4 and 6-11 have been amended via the Attorney's response.

Claims 12-17 have been added via the Attorney's response.

Claims 1, 4 and 6-17 are pending in the instant application.

Claim Rejections - 35 USC §101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4 and 6-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Referring to claim 1, 4, 6-10 and 12-17. The invention as recited in the claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

In the instant invention, a mental process augmented by pencil and paper markings anticipates the claims. The instant claims are not limited to using a machine to carry out the process since the claims do not explicitly set forth the machine. In *Bowman*, the board affirmed a rejection under U.S.C. 101 as being directed to non-statutory subject matter. The Board held that the disclosed and claimed invention was

Art Unit: 3625

nothing more than an abstract idea, which was not tied to any technological art and was not a useful art as contemplated by the constitution. Ex parte Bowman, 61 USPQ2d 1665, 1671. Even though Bowman is not presidential, it can be cited for its analysis.

Referring to claim 11. A computer data signal or a transmission medium per se is not the type of subject matter that is considered statutory. If the signal or transmission medium claim is interpreted as an abstract arrangement "to be transmitted", or as a transmission in transit, rather than a physical signal statically embedded in a physical computer readable medium, the signal claim is considered non-statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 4 and 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaminsky U.S. Patent Application Publication No. 2001/0047308.

Referring to claim 1. Kaminsky disclose a method of managing a selling price, comprising:

- Counting a sales quantity (Fig. 3, "Qty");

Art Unit: 3625

- Setting a discount price as the selling price, the discount price produced by a discount from an original price, while the sales quantity is less than a predetermined quantity (paragraph 0049 and paragraph 0050);
- Setting the original price as the selling price at the time the sales quantity becomes equal to or greater than the predetermined quantity (paragraph 0050);
- Providing a discount price rule which indicates dates and discount prices, wherein each discount price corresponds to each date, for a purchaser (paragraph 0050);
- Accepting a purchase reservation specified with a date among the dates indicated in said rule, from the purchaser (paragraph 0052); and
- Setting a purchase reservation time of the purchase reservation when the selling price corresponding to one of the discount prices from the rule equals the desired purchase price (paragraph 0052).

Kaminsky does not expressly disclose the use of a discount price transition table that includes dates and discount prices, wherein each discount price corresponds to a date.

The Examiner notes, Kaminsky discloses a method where the merchant can set rules (the rules are stored via a database as shown in Figure 2, "36") for a current price. For the current price, the merchant can choose a start price for each product in a given lot that is 20 to 40% off of the regular list price. The merchant then also sets the percentage increment by which current price of a product can move up or down. Current

Art Unit: 3625

price will drop a certain percentage over a given period of time (i.e., 3% drop every 6 hours) as set by the seller (paragraph 050).

Using the rule of Kaminsky as an example (i.e., 3% drop every 6 hours) and assuming that a product for sale had a starting price of \$100.00. The following information could be extrapolated in table form.

Price	Day	Time
\$100	1d	0 hrs
\$ 97	1d	6 hrs
\$ 94	1d	12 hrs
\$ 91	1d	18 hrs
\$ 88	1d	24 hrs
\$ 86	2d	0 hrs
\$ 83	2d	6 hrs
\$ 81	2d	12 hrs
\$ 78	2d	18 hrs
\$ 74	2d	24 hrs

The Examiner notes, a discount price transition table that includes dates and discount prices is merely a manipulation of the rule / algorithm as disclosed by Kaminsky. A table can be defined as a list of entries, each entry being identified by a unique key and containing a set of related values.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the method of Kaminsky to have included the table structure as discussed above in order to allow a user to see a real time display of the quantity of particular products available and be able to assess the value of a product through various price strategies (paragraph 0050). Moreover, to have modified the method of Kaminski to have included a table structure would have been obvious to the

Art Unit: 3625

skilled artisan because the inclusions of such step would have been an obvious matter of design choice in light of the method already disclosed by Kaminski.

Referring to claim 4. Kaminsky further discloses a method comprising:

- Setting the discount price to a minimum discount price (paragraph 0044, "The business entity can set either a floor, or minimum price for the product they wish to offer..."); and
- Holding the minimum discount price as the selling price after the selling price reaches the minimum discount price, as long as the sales quantity is less than the predetermined quantity (paragraph 0039).

Referring to claim 6. Kaminsky further discloses a method comprising allocating a product to the purchase reservation if the sales quantity is less than the predetermined quantity when the selling price reaches the desired purchase price (paragraph 0049 and paragraph 0050).

Referring to claim 7. Kaminsky further discloses a method comprising canceling the purchase reservation if the sales quantity is equal to or greater than the predetermined quantity when the selling price reaches the desired purchase price (paragraph 0056).

Referring to claim 8. Claim 8 are rejected under the same rationale as set forth above in claims 1-7.

Referring to claim 9. Claim 9 are rejected under the same rationale as set forth above in claims 1-7.

Art Unit: 3625

Referring to claim 10. Claim 10 are rejected under the same rationale as set forth above in claims 1-7.

Referring to claim 11. Claim 11 are rejected under the same rationale as set forth above in claims 1-7.

Referring to claims 12-15. Claims 12-15 are rejected under the same rationale as set forth above in claims 1-7.

Referring to claim 16. Claim 16 are rejected under the same rationale as set forth above in claims 1-7.

Referring to claims 17. Claim 17 are rejected under the same rationale as set forth above in claims 1-7.

Response to Arguments

Applicant's arguments filed 10/01/2004 have been fully considered but they are moot in view of the new grounds for rejection.

With reference to the section II heading of the Attorney's remarks, the Attorney mistakenly referenced Kaminsky as U.S. Patent Application Publication No. 2001/00447308. Kaminsky should be referenced as U.S. Patent Application Publication No. 2001/047308.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

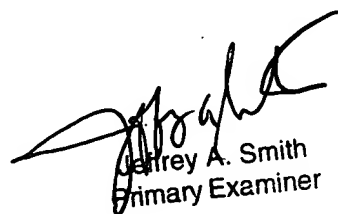
Art Unit: 3625

Any inquiry concerning this communication should be directed to Matthew Walker et al. whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MSG
Patent Examiner
October 14, 2004



Jeffrey A. Smith
Primary Examiner